

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 99-0448
CONTROLLED SUBSTANCE EXCISE TAX
For Tax Period of August 4, 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Controlled Substance Excise Tax – Liability.**

Authority: IC § 6-7-3-5; IC § 6-8.1-5-1

The taxpayer protests assessment of controlled substance excise tax.

STATEMENT OF FACTS

Indiana State Police Officer stopped and searched taxpayer's vehicle on July 7th, 1998. Subsequent to the search, the Indiana State police obtained a search warrant for taxpayer's residence. The police entered taxpayer's residence, which he shared with three others, and discovered a quantity of suspected marijuana that was later tested and weighted and was in fact marijuana weighing 670.62 grams. The Department issued a jeopardy assessment against the taxpayer on August 4th, 1999. Taxpayer timely filed protest to the tax assessment.

DISCUSSION

IC § 6-7-3-5 states that the manufacture, possession or delivery of marijuana is taxable. There was no controlled substances excise tax ("CSET") paid on taxpayer's marijuana, so the Department assessed the tax against him and collected payment from funds seized at his arrest. Indiana law specifically provides at IC § 6-8.1-5-1, notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. The taxpayer timely protested the tax assessment and now bears the burden of proving the proposed assessment is wrong. In support of the protest, the taxpayer states

the marijuana found in the residence was the property of one or all of the female residents and that he did not have possession of it.

The drugs seized pursuant to the search warrant were located and visible throughout the house, including the refrigerator, kitchen, and basement. The police report noted "Marijuana was in plain view throughout the house." (Indiana State Police Supplemental Case Report, Case # 33-21131, 8/3/98, page 6) Taxpayer offers no explanation to their presence other than to assert that one or more of the other residents were responsible. The assessment was correct based on the taxpayer's possession of the drugs.

The taxpayer fails the burden of showing the CSET assessments are wrong by a preponderance of evidence.

FINDINGS

Taxpayer's protest is denied.

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